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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1288 of 2002

APPELLANT: Saheb Singh
(In Jail Custody)

- Versus -

RESPONDENT: State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
6.7.2007

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 9TH JULY, 2007

Sd/-
L.C. Bhadoo
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1288 of 2002

APPELLANT:
(In Jail Custody)

Saheb Singh, son of Bhukhau Baiga, aged about 32 years, resident of Village- Seonikala, P.S.- Chilfi, Distt.- Kawardha (Chhattisgarh)

- Versus -

RESPONDENT:

State of Chhattisgarh, Through P.S. Chilfi, Distt. Kawardha (Chhattisgarh)

{Criminal appeal under Section 374 (2) Cr.P.C.}

Appearance:

Mr. V.P. Gupta, counsel for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.**

JUDGMENT

(Delivered on 9th July, 2007)

The following judgment of the Court was delivered by **L.C. Bhadoo, J.**: -

1. This appeal is directed against the judgment of conviction and order of sentence dated 30th October, 2002, passed by the Additional Sessions Judge (Fast Track Court), Kawardha, in Sessions Trial No.107/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty under Sections 302 & 201 of the I.P.C. for committing the murder of his son Aghnoo Baiga, sentenced him to undergo imprisonment for life and pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month and to undergo R.I. for three years and pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month, respectively.

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2. Case of the prosecution, in brief, is that accused Saheb Singh himself lodged a report Ex.P-8 in Police Station: Chilfi on 31st March, 2000 at 8.30 a.m. to the effect that on Friday night his elder brother namely, Sukhlal Baiga came at about 3-4 a.m. to his house and took his son Aghnoo, aged about 6 years, who was sleeping with him. When Sukhlal Baiga was taking away his son, then he asked him as to what he is doing. He also started following him, he saw that Sukhlal threw his son in the well existing in the field of Milap. His brother said that if he will come towards him then he will kill him also.

3. Receiving this report, after registration of offence under Section 302 of the I.P.C., the Investigating Officer took up the investigation and during investigation, the accused/appellant gave memorandum Ex.P-1 to the effect that on the fateful day at about 3 a.m. in the night he gave beating to his son Aghnoo, thereafter set his son ablaze in the burning hearth in his father's house and after covering the body of his son with a cloth, he went to the agricultural field of Milap Gond and threw the body of his son in the well of Milap, he can get recover the same. Based on this memorandum, the body of Aghnoo was seized from the well at the instance of the accused under Ex.P-2. One black colour jacket and one Lungi of the accused were seized under Ex.P-4. Ash from the hearth was seized under Ex.P-5 in which the body of Aghnoo was set ablaze by the accused. After giving notice Ex.P-6 to the Panchas, inquest Ex.P-7 was prepared on the body of Aghnoo. The body of Aghnoo was sent for medical examination. Dr. M.L. Bachker of Community Health Centre, Bodla conducted post-mortem on the body of Aghnoo on 1-4-2000 and noticed that the body of Aghnoo was in naked condition, stomach was in swollen condition, there was bleeding from nose & mouth, blisters of burning were present on chest & stomach, and there were signs of burning of skin on chest, right hand & waist. The burn injuries were extending up to 45%, in his opinion, the cause of death was blocking of circulation of blood and shock as a result of burn injuries sustained by Aghnoo, the death was homicidal in nature. He prepared the report Ex.P-8.

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4. Site plan Ex.P-9 was prepared by the Investigating Officer. After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Kawardha, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned Additional Sessions Judge, Kawardha, received the case on transfer for trial.

5. The prosecution in order to establish charge against the accused examined nine witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him and said that his elder brother Sukhlal grabbed his land, he also took his bullock and on Thursday, he came and gave beating to him, in the night at about 3 a.m. he took Aghnoo and threw him in the well existing in the field of Milap.

6. Learned Additional Sessions Judge, after hearing the arguments of counsel for respective parties, convicted and sentenced the accused as aforesaid.

7. We have heard Mr. V.P. Gupta, learned counsel for the appellant and Mr. Ashish Shukla, learned Additional Public Prosecutor on behalf of the State/ respondent.

8. Mr. V.P. Gupta has not disputed the homicidal death of Aghnoo. Moreover, Dr. M.L. Bachker has stated in his evidence that he conducted post-mortem on the body of Aghnoo, the body of Aghnoo was burnt up to 45%, blisters were present on the body on account of burning, cause of death was shock and blocking of blood circulation on account of burn injuries and the death was homicidal in nature. The above medical evidence is corroborated by the evidence of Hare Singh (PW-3) - brother-in-law of the accused and Bhukhau (PW-7) - father of the accused. They have categorically stated that the accused set Aghnoo ablaze by pushing him in the burning hearth. In view of ocular and medical evidence, it is established that the death of Aghnoo was homicidal in nature.

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9. As far as involvement of the accused in the crime in question is concerned, learned counsel for the appellant argued that there is no cogent and clear evidence in order to establish charge against the accused.

10. On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

11. Hare Singh (PW-3) - brother-in-law of the accused has categorically stated in his evidence that in the fateful night at about 10 p.m., he came to the house of his father-in-law at Sivni, in the night, he along with Teekaram & Saheb Singh - the accused/appellant, consumed liquor, thereafter, they took dinner. At that time, Aghnoo - son of accused Saheb Singh was sleeping, Saheb Singh asked his son as to why he is not going for collecting Mahua flowers, hearing this, when Aghnoo became frightened and started running, Saheb Singh caught hold of the hand of Aghnoo and in the first instance, he slapped him twice, when he (PW-3) tried to intervene the accused pushed Aghnoo in the burning hearth, he (PW-3) became frightened and ran away.

12. Bhukhau (PW-7) is none else than father of the accused who has corroborated the above evidence of Hare Singh (PW-3) and stated that in the fateful night in between 12 noon and 3 a.m. he was at his residence, his wife Bhukhin Bai and one Hare Singh were also present in the house, the accused caught Aghnoo, he asked him to leave him, but Saheb Singh pushed Aghnoo in burning hearth as a result of which body of the child sustained burn injuries. Seeing all this, they became frightened and ran away to the house of his grand-daughter Phoolvati Bai. In the morning, he returned to his house, nobody was there, he searched for Aghnoo, but he could not be traceable. During day, the Police came, Saheb Singh was with them, thereafter, the accused, the Police and he along with other villagers went to the field of Milap and from the well, the body was taken out.

13. Phoolbat (PW-5) has stated in her evidence that in the fateful night, his father & mother came, they started crying and asked her to open the door, when she opened the door, they disclosed that Saheb Singh is quarrelling,

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therefore, they will sleep there, her father also informed her that Saheb Singh has set his son ablaze. In cross-examination of these witnesses defence has not been able to elicit any circumstance which discredits the evidence of these witnesses. Moreover, Bhukhau (PW-7) is father of the accused, Hare Singh (PW-3) is brother-in-law of the accused and Phoolbat (PW-5) is also closely related to the accused, there was no reason for them to implicate the accused in a false murder case and that too for the murder of his own son. Investigating Officer N.K. Benwal (PW-9) has stated in his evidence that on 31st March, 2000, the accused gave memorandum Ex.P-1 that he threw the body of Aghnoo in the well, in pursuance of that at about 11 a.m., the accused took him to the well and the body was recovered from the well under Ex.P-2 at the instance of the accused. Above evidence of the Investigating Officer is corroborated by the evidence of Sumran Singh (PW-1) who has also stated the accused gave memorandum and in pursuance of that the body of child was recovered from the well under Ex.P-2.

14. Therefore, in the first instance, as per the evidence of Bhukhau (PW-7) & Hare Singh (PW-3) in their presence the accused pushed Aghnoo in burning hearth as a result of which he sustained burn injuries, thereafter, the accused threw the body of Aghnoo in the well of Milap and the body was recovered at the instance of the accused under Ex.P-2. As per the doctor's evidence, death of Aghnoo was homicidal in nature.

15. In the circumstances, from ocular evidence and medical evidence as also the circumstantial evidence it is established beyond reasonable doubt that the accused was the author of the murder of Aghnoo that is his son. We do not find any illegality and infirmity in the judgment of the trial Court.

16. In the result, the appeal fails, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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